



# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/733,398	12/12/2003	Gunter Kohler	Q78757	9135
23373 7590 03/22/2007 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER HERRERA, DIEGO D	
			ART UNIT 2617	PAPER NUMBER
			MAIL DATE 03/22/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

March 22, 2007

SUGHRUE MION, PLLC  
2100 PENNSYLVANIA AVENUE, N.W.  
SUITE 800  
WASHINGTON, DC 20037  
US

Dear Sir/Madam,

Your refund request for 10733398 in the amount of \$1,070.00 has been denied.


The money cannot be refunded because

under 37 CFR 1.26(a) refunds are only allowed if the fee was paid by mistake or in excess of that required. In this situation, the extension of time and Notice of Appeal are required to keep the case from becoming abandoned.

Responses under 37 CFR 1.116 and 1.35(b) will not operate to avoid abandonment for the application in the absence of a timely and proper appeal. Any delay is not "unavoidable" when applicant simply permits the maximum extendable statutory period for reply to a final office action to expire while awaiting a notice of allowance or other action. Finally, a delay caused by an applicant's lack of knowledge or improper application of the patent statute, rules of practice or the MPEP is not rendered "unavoidable" due to: (A) the applicant's reliance upon oral advice from USPTO employees; or (B) the USPTO's failure to advise the applicant of any deficiency in sufficient time to permit the applicant to take corrective action. See *In re Sivertz*, 227 USPQ 255, 256 (Comm'r Pat. 1985). See MPEP 711.03(c).

Furthermore, since the application was in final status and prosecution was closed, applicant no longer has any right to unrestricted further prosecution. MPEP 714.12. Applicant cannot as a matter of right amend any finally rejected claims.

Sincerely,

  
Earline Green  
Technical Center 2600  
571 272 2993